

VIRGINIA CODE COMMISSION
Wednesday, November 16, 2005 - 9 a.m.
General Assembly Building, 6th Floor
Speaker's Conference Room
Richmond, Virginia 23219

MEMBERS PRESENT: William C. Mims, Chairman; S. Bernard Goodwyn; Diane M. Strickland, Thomas M. Moncure, Jr.; Frank S. Ferguson; William C. Crammé (Mr. Miller's designee)

MEMBERS ABSENT: R. Steven Landes, Vice Chairman; John S. Edwards, Robert L. Calhoun, Robert Hurt; E.M. Miller, Jr.

STAFF PRESENT: Patricia Davis, Ken Patterson, Michael Flaherty, Amy Marschean, Frank Munyan, Lisa Wallmeyer, Robie Ingram, Jane Chaffin

OTHERS PRESENT: Doug McCartney, LexisNexis

CALL TO ORDER

Chairman Mims called the meeting to order at 9:20 a.m. It was noted that a quorum was not present and the next item on the agenda, Review and Approval of the October Minutes, was deferred.

REVISION OF TITLE 3.1: ISSUES FROM OCTOBER MEETING

Michael Flaherty presented resolution of several issues that arose at the last Code Commission meeting.

The necessity of subsection B of § 3.1-796.68, which requires game and wildlife species to be cared for in accordance with Board of Game and Inland Fisheries regulations, was questioned at the October meeting. Staff checked with the Department of Game and Inland Fisheries and the Department has no objection to removing this provision as a permitting process for regulating the care of game and wildlife species is currently in place.

Based on concerns expressed by Mr. Calhoun at the October meeting, § 3.1-796.122 C (relating to dehorning of cattle) and D (including birds and fowl in the meaning of the word "animal" in certain sections), those subsections have been reinstated. The amendment to subsection E (allowing certain authorized wildlife management activities; hunting, fishing or trapping; or farming activities) shown on lines 24 and 25 has been removed and the subsection has been reinstated to its current form. Senator Mims asked staff to perform a code wide word search on the use of the phrase "reasonable and customary manner," which appears as added language on line 25. If the phrase is used elsewhere, add the amendment at the end of subsection C; if it does not appear elsewhere but a similar term or phrase is used that has the same meaning, bring the suggested substitute language to the Commission for its review.

At the last meeting, staff was asked by the Commission to compile the sections listed in paragraph 1 of § 3.1-796.94 that articulate standards subject to being overridden by a locality. The result is a 48-page compilation of sections. Staff noted that the bolded text shows language that could be made more stringent by ordinance. After reviewing the

handout and discussing the issue, the Commission decided to leave the language as originally proposed at the October meeting.

**GENERAL MATTERS RELATING TO THE 2007 CODE OF VIRGINIA
REORGANIZATION PROJECT**

Compacts

Ken Patterson advised the Commission that DLS staff had been operating under direction to move all compacts from titles where they currently reside into a separate Compacts title. However, uncertainty has arisen as to whether this is a correct understanding. In addition, some state agencies have expressed specific concerns about removing compacts from their basic law that are integral to understanding the underlying code provisions.

The Commission reaffirmed its policy that if a compact is organic and integral to understanding the underlying code section, the compact should remain with the code. Otherwise, the compact should be moved solely to the compacts volume. Since a compacts volume exists as part of the code, no separate compacts title will be created. Those compacts that remain with the code will be repeated in the compacts volume so that the compacts volume is a complete compilation of all interstate compacts. A member commented that it would be desirable to include a statement somewhere in the compacts volume that indicated that state compacts may not be amended by the General Assembly without the approval of signatory states and passage of Congress.

For purposes of the 2007 Code Project, DLS staff is expected to analyze compacts for inclusion in the Code in the same manner staff would analyze other laws passed by the General Assembly for inclusion. To the extent that compacts are codified, designate compacts at the chapter level, leaving the implementation provisions as a separate chapter.

Removing Codified Provisions

At Pat Davis' request, the Chairman deferred the agenda item relating to the removal of codified provisions until the spring meeting due to time constraints.

REVIEW AND APPROVAL OF MINUTES

At this time, the Chairman noted that a quorum was established and returned to agenda item #2, Review and Approval of October Minutes. Judge Goodwyn made a motion, seconded by Judge Strickland, to approve the minutes of the October meeting as presented. The motion was approved.

2007 CODE OF VIRGINIA REORGANIZATION PROJECT

Proposed Social Services Title

Amy Marschean presented the proposed Social Services Title, which consists of current Title 63.2 (Welfare). This title recently went through the recodification process and required very little reorganization.

1 During the Commission's review of the proposal, the members moved the Grant
2 Programs and Funds subtitle to precede the Licensure subtitle. In addition, the
3 Commission incorporated Chapters 13 and 14, which relate to adoption, as separate
4 articles within Chapter 12, Adoption.

5 Proposed Provision of Utility Services Title

6 Frank Munyan proposed retitling the current Title 56, Public Service Companies, to
7 address the provision of utility services. Mr. Munyan stated that the proposed outline is
8 similar to the outline adopted five years ago when the Commission initiated a revision of
9 Title 56 in 2000. At that time, work was halted about midway through the process
10 because a joint subcommittee chaired by Senator Norment was studying fundamental
11 issues with regard to the broad powers of the State Corporation Commission that were
12 granted with respect to public service companies. The Commission placed the title
13 revision on hold pending the conclusion of the SCC study and the transition of electric
14 deregulation.

15 Without objection, the Commission approved Mr. Munyan's proposal with the following
16 modifications:

- 17 1. Move proposed Subtitle III, Railroads and Transportation Services, into the Aviation,
18 Rail and Ports title.
- 19 2. Retain all branch pilot provisions where they currently reside in Title 54.1. When
20 Title 54.1 is presented, the Commission will consider whether the SCC-administered
21 branch pilots fees and charges provisions should remain in Title 54.1 or moved to
22 Aviation, Rail and Ports.
- 23 3. If funding is provided in the 2007 "caboose" budget, move Article 8 of Chapter 11
24 (Telephone Reading Services) to the title containing provisions of the Department of
25 Blind and Vision Impaired.
- 26 4. Move Hazardous Liquid Pipeline Safety Act to Chapter 9 of Subtitle I.
- 27 5. Repeal § 56.51.1 (donation of entire capital stock of turnpike or ferry corporations to
28 Commission or to political subdivisions) if it does not apply to anyone, or uncodify
29 the section if staff determines repealing of the section impractical.
- 30 6. Change the name of the Public-Private Education Facilities and Infrastructure Act of
31 2002 because the act rarely applies to construction of public-private education
32 facilities, but tends to apply to projects such as capitol renovation.
- 33 7. Retain the Washington Metropolitan Area Transit Regulation Compact in the
34 Compacts Volume only with an added reference to the compact's location in the
35 appropriate code title.

36 Proposed Commerce Title

37 Mr. Munyan stated that Title 59.1 was last recodified in 1968. The title has become a
38 catchall title where laws are added when it is difficult to determine another title in which
39 to place them. Mr. Munyan proposed renaming the title "Commerce" with a focus on the

1 regulation of conduct of commercial activity. He has attempted to appropriately group
2 approximately 50 various chapters.

3 Mr. Munyan noted that there are a number of crimes currently in Title 59.1 that the
4 Commission might wish to consider moving to Title 18.2. In addition, he noted a
5 provision in Title 18.2 (§ 18.2-186.3:1) relating to blocking information on a credit report
6 that has no penalty attached that could possibly be moved to Title 59.1. The Chairman
7 deferred these issues until a future meeting where more members would be present to
8 participate in the discussion.

9 The next issue, moving the weights and measures provisions from Title 3.1 to the
10 Commerce title, was discussed at the August meeting. At the August meeting, several
11 individuals spoke against moving the provisions out of Title 3.1 and the Commission
12 deferred the issue pending the receipt of written opposition to transferring these
13 provisions. No written opposition has since been received; therefore, the Commission did
14 not oppose the transfer of the provisions.

15 At the Commission's request, staff will attempt to separate pre-consumer and post-
16 consumer provisions in Subtitle V into two separate subtitles, with one subtitle dealing
17 with pre-sale and the other dealing with post final sale.

18 The Commission made the following additional changes to the proposed organization:

- 19 1. Moved provisions that do not deal with regulation of conduct of a commercial
20 activity out of the Commerce title. Mr. Munyan proposed creating a new title or
21 subtitle called "Economic Development Incentives"; however, the Commission
22 decided to temporarily place such provisions in Title 2.2.
- 23 2. Requested staff to determine if the Semiconductor Manufacturing Performance Grant
24 Programs and Solar Photovoltaic Manufacturing Incentive Grants statutes can be
25 repealed; if not, determine if the provisions can be uncodified and not set out in the
26 code as the provisions are limited to specific counties.

27 Title 60.2, Unemployment Compensation; Title 65.2, Workers' Compensation

28 Mr. Munyan indicated that only minimal changes are proposed to Title 60.2. Coleman
29 Walsh with the Virginia Employment Commission sent in a suggestion requesting the
30 Commission to consider conforming the statutory code numbering system with the
31 Virginia Administrative Code. The Code Commission will add this item to a future
32 agenda for further discussion.

33 The Commission discussed combining Titles 40.1 (Labor and Employment), 60.2 and
34 65.2 into a title called, "Employment, Labor and Workers' Compensation." Staff noted
35 that Title 65.2 now becomes Subtitle III.

36 Mr. Munyan conveyed Commissioner Tarr's suggestion to divide the Title 65.2
37 definitions section into separate sections because it is too lengthy. The Commission
38 indicated that a separate bill would be needed to accomplish this task and felt that it
39 would be more appropriate for the Workers' Compensation Commission to initiate such
40 legislation.

1 The Commission recessed for lunch.

2 Proposed Public Safety Title

3 Lisa Wallmeyer stated that she combined Titles 9.1 (Commonwealth Public Safety), 27
4 (Fire Protection), 44 (Military and Emergency Laws), and 52 (State Police) to create the
5 proposed Public Safety title.

6 Changes made by the Commission to the proposed organization include:

- 7 1. Transferred provisions for local police and sheriffs from Title 15.2 (Counties, Cities
8 and Towns) with the contingency that staff contact John Jones and discuss the issue
9 with him. If he has no objection, go forward with moving the provisions into the
10 Public Safety title. Otherwise, bring any concerns back to the Commission for its
11 consideration.
- 12 2. Incorporated Title 53.1, Prisons and Other Methods of Correction, into the Public
13 Safety title and rename the title, "Public Safety and Corrections."
- 14 3. In Subtitle IV, inserted the Naval Militia provisions between the National Guard
15 chapter and the Virginia State Defense Force provisions.
- 16 4. Moved the Commercial Motor Vehicle Safety chapter from State Police to the title
17 containing transportation provisions. Although regulatory authority resides with State
18 Police, the provisions appear to be transportation related overall.
- 19 5. Asked staff to check the appropriateness of moving Chapter 10, General Provisions,
20 to the beginning of the State Police subtitle.

21 Proposed Technology Title

22 Lisa Wallmeyer advised the Commission that five states currently have a code title
23 devoted exclusively to technology issues. Staff identified four acts that are technology
24 related for possible inclusion: Virginia Information Technologies Agency, Information
25 Technology Access Act, Uniform Electronic Transactions Act, and Uniform Computer
26 Information Transactions Act. Ms. Wallmeyer stated that her proposal does not include
27 moving any technology-related provisions that have criminal implications. Staff
28 emphasized that, although the title is small, it expected to grow given the pervasive and
29 cross-disciplinary nature of technology issues. The Commission made one change to the
30 proposal by adding the Center for Innovative Technology.

31 Proposed Crimes and Offenses Generally Title

32 Robie Ingram presented the proposed Crimes and Offenses Generally title, which is
33 composed of current Titles 18.2 (Crimes) and 48 (Nuisances). The Commission made the
34 following changes to the proposal as presented:

- 35 1. Moved the Crimes by Mobs, Crimes by Gangs, and Terrorism articles out of Chapter
36 4 (Crimes against the Person) and into a separate chapter.
- 37 2. Moved § 18.2-186.3:1, which was brought up as in issue during the proposed
38 Commerce title presentation, to the Personal Information Privacy Act in the
39 Commerce title.

3. Moved Article 10 (Cigarette Delivery Sale Requirements) of Chapter 6 to the Commerce title under the "pre-consumer" subtitle.
4. Added § 18.2-232.1, consuming alcohol while operating a motor vehicle, to the end of Article 3 (Driving Motor Vehicle, etc., While Intoxicated or Consuming Alcohol) of Chapter 7.
5. Asked staff to find a more accurate heading for Article 7 (Other Illegal Weapons) of Chapter 7. "Other Weapons Offenses" was suggested as a possible replacement.
6. Made minor technical changes to the heading of Article 1 of Chapter 9 so it reads "Riot, Unlawful Assembly, and Disorderly Conduct."
7. Moved the Virginia Governmental Frauds Act as an article under Chapter 6, Crimes Involving Fraud.

Proposed Criminal Procedure Title

Mr. Ingram stated that the proposed Criminal Procedure title consists of current Title 19.2. The Commission made the following modifications to the proposed title as presented:

1. Retained §§ 19.2-265.01 (Victims, certain members of the family and support persons not to be excluded) and 19.2-265.1 (Exclusion of witnesses) where they currently exist instead of moving the provisions to the newly created article titled, "Crime Victim and Witness Rights."
2. Incorporated Article 3, Appeals, into Article 2 (Powers and Duties) of Chapter 3 (Conservators of the Peace and Special Policemen).

The Chairman deferred agenda items 9 (Title 53.1) and 10 (Proposed Education Title) until a future meeting and continued with agenda item 11, Other Business and Public Comment.

OTHER BUSINESS AND PUBLIC COMMENT

No other business came before the Commission.

No one came forward during the designated public comment period.

A two-day meeting is scheduled in Richmond in December as follows: Thursday, December 8 beginning at 2 p.m. and Friday, December 9 beginning at 9 a.m.

ADJOURNMENT

The meeting adjourned at 3:45 p.m.